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) Docket No. FIFRA-92-H-04  
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ORDER ON COMPLAINANT'S MOTION TO AMEND PREHEARING EXCHANGE

Metrex generally opposes the EPA's motion to amend on the grounds that the witnesses and exhibits now sought to be added could have been added earlier, that the EPA's effort to add them now is unjustified and that Metrex will be prejudiced by the amendments. It is unnecessary to consider whether the EPA should have sought leave to amend earlier. The primary considerations are whether the evidence is relevant, whether the proceeding will be delayed and whether Metrex will be prejudiced by the amendments.

Complainant's motion to amend its prehearing exchange to include Mr. Srinivas Gowda, Ms. Christine Twohy, Ms. Carol Olson, Ms. Jeanne Bolander, Mr. Aram Beloian, and Mr. Anthony Duran as additional witnesses is granted. It appears that the testimony of all these witnesses is not only relevant but could be significant with respect to the reliability of the EPA's test. Prejudice to Metrex, although alleged, has not been shown, as these witnesses will merely provide additional information on the EPA's tests, an issue which has already been much discussed in the papers. Since

the hearing is now scheduled for February 28, 1994, there is no reason to believe that the addition of these witnesses should result in any delay.

Metrex also argues that the testimony of these additional witnesses will be cumulative. It does not appear from the description of their proposed respective testimony that this will be so. In any event, the exclusion of unnecessarily repetitive testimony can be handled by appropriate objection at the hearing. See Second Order on Motions at 5.

Metrex's motion to depose Mr. Beloian is denied. The basis for Mr. Beloian's expert opinions can be adequately explored by cross-examination at the hearing, if he is called as a witness. The need for subjecting Mr. Beloian to the expense and burden of a pre-hearing deposition has not been shown.

Metrex's motion to depose Ms. Twohy, Mr. Gowda, Ms. Olson and Ms. Bolander is granted. These witnesses appear to have specific factual information regarding the adequacy of the laboratory practices used in carrying out the tests. Their depositions are allowed for the same reasons that the depositions of the other witnesses involved in the actual testing have been granted. See Order on Discovery at 3-4. Again, the depositions shall be taken in the city where the persons work or live and must be completed in time so as not to delay the hearing.

Metrex's motion to depose Mr. Glebe is denied. Mr. Glebe inspected the premises and collected the samples that were taken. His report is listed as an EPA exhibit. Metrex can adequately

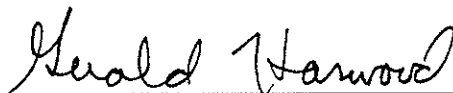
inquire into Mr. Glebe's handling of the samples by cross-examination of Mr. Glebe at the hearing. The need to subject him to the expense and burden of a prehearing deposition has not been shown.

The EPA's motion to substitute Ms. Brenda Mosely for Ms. Elizabeth Crowley is also granted. Ms. Mosely has replaced Ms. Crowley as the Case Development Officer assigned to this case. There has been no showing by Metrex that it will be prejudiced by the substitution.

The EPA's motion to add new exhibits is granted, except that the motion to add CX 83 is denied since the motion to amend the complaint was denied. See Second Order on Motions at 4.

Metrex argues that the new copies of CX 63 and 64 will significantly expand the issues. This is not readily apparent from the description of the exhibits and a more specific showing would have to be made before the argument could be considered.

The admissibility of the other exhibits can be considered when they are offered into evidence.



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Gerald Harwood  
Senior Administrative Law Judge

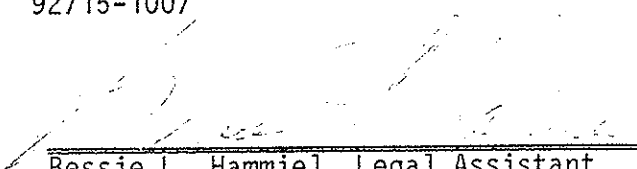
Dated: October 13 1993

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing Order On Complainant's Motion To Amend Prehearing Exchange was filed in re Metrex Research Corporation; Docket No. FIFRA-92-H-04 and copies of the same were mailed to the following:

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Dated: October 13, 1993